2007 Unemployment-Insurance Legislation

May 28, 2007

During the 2007 legislative session, lawmakers passed a series of new laws to increase the equity and efficiency of the unemployment-insurance system.

Tax cut for new businesses *(House Bill 1278)*

Tax cut will save new employers $9 million in 2008

For some time, new employers have paid a starting unemployment-insurance rate of 115 percent of their industry's average.

The new law creates an adjustable introductory tax rate for new businesses. Beginning in 2008, the starting rate will be 90 percent, 100 percent or 115 percent of their industry's average, depending on the benefits charged and the taxes collected from new employers during the previous three years.

Under the new law, new employers will save more than $9 million on their unemployment taxes in 2008. These are mostly small businesses with five or fewer employees.

Holding employers accountable *(Senate Bill 5373)*

Employers now accountable for errors on tax reports

Reporting errors ~ Businesses that have employees who work in Washington are required to report those employees' wages and the hours they work to the department each quarter. The information is used to determine whether a worker is eligible for unemployment benefits if he loses his job.

When an employer reports inaccurate information, it can result in an overpayment if a worker has already received benefits. From 2003 through 2005, employer errors caused an average of $1.17 million a year in these types of overpayments, and state law did not hold anyone accountable for repaying them. Instead, the costs were spread across all employers (socialized). The new law will hold each employer accountable for overpayments caused by its reporting errors.

Corporate officers held accountable for tax evasion

Corporate officers ~ Before the 2007 legislative session, when a corporation closed and owed unemployment taxes, the department had no ability to collect on the debt and other employers had to cover the costs. On average, corporations in Washington were generating more than 1,200 uncollectible debts worth $5.1 million each year.

Under the new law, when a corporation closes, the department may hold the corporate officers personally liable for unpaid taxes, interest and penalties if it is proved that the officers willfully evaded the taxes, destroyed tax records or made false statements about taxes. This gives Employment Security the same authority as the departments of Revenue and Labor & Industries already had.

Preventing claimant fraud *(Senate Bill 5373)*

Fines created for committing unemployment fraud

Claimant-fraud penalties ~ Before the 2007 legislative session, people who fraudulently collected unemployment benefits had to repay the benefits and could not collect benefits for 26 weeks. There was no fine for committing unemployment fraud. Without a strong deterrent, repeat offenses are a problem. In the last 12 years, 2,300 repeat offenders committed almost $20 million in fraud; some defrauded the system as many as six times.

The new law establishes a monetary fine for fraud and increases the weeks that a person who commits fraud is disqualified from receiving benefits, with the penalties increasing for repeat offenses. Stiffer penalties should deter people from trying to scam the system, which will help control employers' costs and stabilize their tax rates. This section of the law takes effect in January 2008.

Making the tax system more efficient *(Senate Bill 5373)*

Penalty inequities for employers fixed

Penalty improvements ~ Minor changes were needed to a 2003 law that increased penalties for employers that file incorrect or incomplete tax-and-wage reports. Some inequities and inefficiencies were later discovered that needed to be fixed.

For example, the 2003 law imposed a penalty of up to $250 or 10 percent of the employer's quarterly tax bill, whichever is less, for each offense. For businesses with very small tax bills, a penalty of 10 percent could be less than $1, while a larger employer with a similar violation could face a penalty of $250.

In the case of incomplete or incorrectly formatted reports, the new law clarifies that Employment Security will issue a warning letter for a first offense and offer technical assistance. Equitable and consistent penalty amounts are established for repeated offenses that occur within a five-year period, starting with a minimum of $75.

Unemployment coverage for corporate officers is required

Coverage of corporate officers ~ Before the 2007 legislative session, for-profit corporations had the option of whether to elect unemployment coverage for their corporate officers. A 2006 study by the department showed that more than 60 corporations applied for and were granted coverage within 45 days of closing their accounts each year and that almost one-fourth of all officers in the study group were placed on stand-by while collecting benefits – indicating that some corporations paid less in taxes than was paid out in benefits and that some corporate officers collected benefits while the corporation was still in business.

Beginning in 2009, corporations will be required to register their corporate officers with Employment Security and to provide unemployment coverage for their corporate officers. Opt-out provisions are consistent with those for the Department of Labor & Industries. Officers who own 10 percent or more of the business are not eligible for unemployment benefits while they retain their position or ownership.

PEO clients will pay unemployment taxes based on their own layoff experience

Professional employer organizations (PEOs) ~ PEOs are businesses that manage human-resource issues for other companies through a contract agreement. They often refer to themselves as a co-employer because the client company's employees work at the client company's work site, but the human-resource functions, such as health benefits, workers' compensation, payroll and unemployment-insurance, are managed by the PEO.

Pre-2007 laws and regulations did not recognize co-employer relationships in Washington. Most PEOs, therefore, elected to report their clients' employees under the PEO account, which often has a lower experience rating and, thus, lower unemployment taxes. However, Employment Security was concerned that this undermined the principles of Washington's experience-based tax system.

The new law recognizes PEOs as co-employers with their client companies. However, by this September, professional employer organizations (PEO) must register themselves and their client companies with the department and file separate tax reports for each client. Also, each client company will pay taxes based on its own unemployment experience, rather than sharing a single rate with other clients of the PEO, beginning in 2008.

New self-employment program *(Senate Bill 5653)*

People can receive benefits while learning to start their own businesses

The legislature introduced a new self-employment benefits program for people who are likely to run out of unemployment benefits before they find a job. The new program will allow people to collect benefits while they participate in entrepreneurial training, business counseling and other activities that relate to starting a new business. Training options will be pre-approved by the department. The program will start in January 2008 and run through June 2012.

Some workers not eligible for benefits

A pair of other bills will affect employers in certain industries.

Small theaters no longer report performers

- ***Small performing-arts companies.*** Theater companies, dinner theaters, dance companies, musical companies and museums with three or fewer employees will no longer pay unemployment taxes for people who are involved in productions. This includes actors and actresses, lighting technicians, costume designers, etc. It applies only to those who are paid a stipend, as opposed to an hourly wage.

  A stipend is a fixed amount of money that helps cover a person's expenses, such as meals, transportation, hotel, costumes and child care. To qualify under this law, the stipend cannot exceed $600 per person, per year. (Senate Bill 5534)

Church workers not eligible for benefits

- ***Churches and religious organizations.*** These organizations must notify their employees that they may not be eligible for unemployment benefits if they lose their jobs. The department will send information to these employers to post for their employees. (Senate Bill 5702)

Unless otherwise noted, all of the new laws changes will take effect on July 22, 2007. To read the laws, go to www.leg.wa.gov, click on "Bill Search" and look them up by their bill number.

Contact ***Jill Will, Legislative Liaison, 360-902-9457 or jwill@esd.wa.gov***

Produced by Office of Communication & Legislation, 360-902-9308